Supreme Court, U.S.
FILED
JUL 29 1989
JOSEPH F. SPANIOL, JR.
CLERK

89-165

In the Supreme Court

OF THE

United States

SECOND APPELLATE DISTRICT

OCTOBER TERM 1989

INEZ C. BOYD
Petitioner,

vs.

ANGELA BLACK, THOMAS VAN AMBURG,
KENNETH NELSON, and KABC-TELEVISION
AMERICAN BROADCASTING COMPANIES
(now CAPITAL CITIES/ABC, INC.)
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL

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In Propria Persona

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QUESTION PRESENTED

This Court has held that under the First Amendment to the United States Constitution, a Plaintiff who is a "public official" and one who is a "public figure" must both prove actual malice by clear and convincing evidence before any damages may be recovered in a defamation action, but that a "private" citizen is not bound by the same restrictions.

This Court has not, however, articulated who is and, more importantly, who is *not a* "public figure" — the term "public figure" remains undefined. The void left may be filled by submission of false information, known to be false, to the courts, with some of the information having been secured illegally. Direct appeals are being made to stored knowledge, for prejudged decisions, instead of for individual, case by case, determinations. The "chilling effect" first envisioned for the press, through curtailment of free speech, is now being felt by private citizens who are being denied open access to the courts.

The question presented is:

Whether the First Amendment protection of free speech extends the broad public-interest privilege to the news media, in a case of Slander Per Se, for submission of false information, illegally obtained, to the courts, thus, promoting a "public figure" image — where none existed, before — for a "private ' citizen, without the courts' validation of key evidence?*

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* The corrected name "AMERICAN BROADCASTING COMPANIES, INC." (now CAPITAL CITIES/ABC, INC.) was added by plaintiff's motion amending the original Complaint and noted by the pre-trial court, 2-25-88, pursuant to Court Rule 28.1.

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PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL

Petitioner Inez C. Boyd respectfully requests that a writ of certiorari issue to review the final judgment of the California Court of Appeal, Second Appellate District ("Court of Appeal"), entered in this case on February 10, 1989.

The question presented merits review because this court has never determined whether, in cases where information has been acquired *unlawfully* by the news media or by a source, government may ever punish not only the unlawful acquisition but the ensuing broadcast or publication as well.

In this instant case, respondents, using false information, eased a "private" citizen into "public figure" status, for the sole purpose of structuring a defense to protect

against the showing on the air of illegally obtained medical records — slander per se.

There was immediate, irreparable damage to the reputation of a seven (7) year AFTERCARE research health services program, which was forced to close its doors. The privacy interests of these client medical records were protected both by Federal Regulations and State of California Administrative Code.

In the instant case this Court has an opportunity to address, directly, the issue of deliberate use of false information, by news media to knowingly mislead, not only the courts below but its own television viewing audience. The question of whether the First Amendment constitutional rights of a private citizen to freedom of speech and to due process have been abridged also awaits a determination from this Court.

This Court has left the term "public figure" undefined.

The opportunity exists for this Court to address the issue of a clear-cut definition for a "public figure" as distinguished from a "private" citizen, and the use by a Number One Nielsen rated television station — wholly owned by a national broadcaster, Capital Cities/ABC, INC. — of false information to deliberately mislead the courts below, resulting in a violation of its federal mandate to protect the public interest.

This Court has stated: "... the general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard we have said, 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *Roth v. United States*, 354 U.S. 476, 484. There are also statements of this Court: "... to

the effect that the Constitution does not protect libelous publications."[1] *New York Times Co. v. Sullivan*, 376 U.S. at 268, 269. The issue is joined.

OPINIONS BELOW

The entire Opinion of the Court of Appeal is reprinted in App. A., at 1a-14a. The May 3, 1989 order of the Supreme Court of California denying petitioner's Petition For Review is unreported and is reprinted in App. B, at 1b. The May 24, 1989 judgment of the Court of Appeal, known as a Remittitur is unreported and is reprinted in App. C, at 1c.

JURISDICTION

This case presents a substantial federal question not answered by this Court regarding the formulation of a clear definition of a "public figure" — as yet undefined — in order to protect the rights of a private citizen to recover damages for a ruined reputation, without proving actual malice. In this instant case, California was one of three states that continued to blur the lines of demarcation between "private" citizen and "public figure". And, even though the State Supreme Court of California struck down the California Civil Code Section 47(3) finding " . . . no support in the language or history of section 47(3) for the broad public interest privilege claimed by defendants . . . "[2], making it easier for private citizens to sue,

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[1] *Konigsberg v. State Bar of California*, 366 U.S. 36, 49, and n. 10; *Times Film Corp. v. City of Chicago*, 365 U.S. 43, 48; *Roth v. United States*, 354 U.S. 476, 486-487; *Beauharnais v. Illinois*, 343 U.S. 250, 266; *Pennekamp v. Florida*, 328 U.S. 331, 348-349; *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572; *Near v. Minnesota*, 283 U.S. 697, 715.

[2] *Shirley v. Brown*, State Supreme Court of California, Opinion

before (April 27, 1989) the date of the State Supreme Court filing of Petitioner's denial (May 3, 1989) of a hearing on the Petition For Review, Petitioner was afforded no relief from the Opinion.

In addition, two fundamental issues are raised:

— *one,* concerning open access for minority citizens to the California system of justice, *due process,* and

— *two, — freedom of speech,* concerning denial of minority rights to publish results compiled through initiating treating practices of a new health discipline,[3]

AFTERCARE, TRACKED AT THE TREATMENT PROGRAM LEVEL BY THOSE BEING TREATED; Appellant searches for an answer to the question:

Whether having been denied these constitutional rights by a Trustee/Broadcaster's violation of its public trust, the deprivation gives rise to an action for damages?

The use of the vast powers of a Federal Trustee/Licensee Broadcaster, in this manner, appears to make this a case of first impression — constitutionally guaranteed freedoms, to one party, used by that party, to deny those same basic freedoms to another.

This Court has jurisdiction to review the decision of the Court of Appeal under 28 U.S.C. section 1257(a). The decision of the Court of Appeal is final for the purposes of Section 1257(a) because it finally decides that plaintiff *IS* a "public figure", actually, a *"limited purpose public*

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[3]C.T. 80 Lists possible publications for Director Single State Agency. Exhibit — Letter from *B'ai B'rith, Anti-Defamation League* makes offer to read results of unique, one-of-a-kind drug abuse treatment program on AFTERCARE, in progress, for publication, shortly before ABC/KABC-TV Broadcast announcement closed the program.

figure" by use of false information, distorted and slanted by nature of its selection from the petitioner's private life to support respondents' claim of a public life. It appears that this decision is not subject to further review in the state courts, and failure to resolve promptly the federal questions presented here will prolong the uncertainty caused by the Court of Appeal's decision, thus, seriously eroding the rights of private citizens to due process.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution provides that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

Petitioner, Inez C. Boyd, ("Boyd") is a teacher and a sociologist. This educational training and experience in community organization — bringing people together to work to resolve chronic social ills, where they live — was being utilized as a health professional, in Los Angeles, while living in Whittier, California, (a thirty mile commute), engaged in a seven (7) year health discipline research project, in July, 1982, when Boyd received a friendly call from a reporter Angela Black ("Black") from KABC- TV/ABC, INC., requesting an appointment to discuss the program. Both agreed to meet at 1:00 p.m. on July 22, 1982. The research was designed to add the final component to a successful experiment in democracy.

Los Angeles County was tightly organized and anyone who received public funds belonged to several organizations. See CHART App. D.

Boyd was a teacher at Whittier college. She was hired to work at Kedren Community Mental Health Center, under the direction of Honorable Judge Alban I. Niles, a sitting judge in Los Angeles County now, but President and legal counsel to Kedren when Appellant came to that community. Boyd was hired by Honorable Judge Niles to assist him in adding the two components to Community Mental Health Centers Corporate Owners required by law:

1. *Education and Consultation* — Boyd's duties were to educate the public about Kedren's services, to consult with schools and other health professionals and to attend professional meetings in the community and around the state.

2. *A Drug Abuse Component* — the Southeast Coalition, a professional organization, see App. G voted to set-up an Aftercare program at Kedren, P.T.P. as its first priority. The program was administered by Honorable Judge Niles. Boyd worked for him. He was her boss.

Boyd did not, therefore, found P.T.P. to deal with drug abuse as Respondents say. The statement is false. App. E.

Boyd did not "found" I-TAC to deal with drug abuse as Respondents say. The statement is false. 600 church members created I-TAC for their own personal reasons. That is the reference for the "I" in *I-The American Citizen* strictly personal and private. Nothing is more private in America than one's religion and I-TAC was created in Whittier, California with the input of all religious faiths. The agenda is C.T. 233-224 and the word "Drugs" does not appear. Appellant submits declarations from the Hon-

orable Judge Alban I. Niles App. E. and Attorney Errol Gordon given on the subject that Inez C. Boyd worked for Kedren when P.T.P. was voted into existence by the Southeast Regional Coalition. There was no controversy as all programs in the region cooperated by sending recovering addicts to P.T.P.

However, on July 21, 1982, one day earlier than the agreed upon appointment date to meet with Boyd, the director, P.T.P., the ABC reporter Black, from Number One Nielsen rated KABC-TV burst into P.T.P., unannounced in a surprise "raid", entered the client medical files and began rolling these on the air. The director was not in the administrative offices, so no one gave Black permission to enter. Black did not have a warrant signed by a public official as required by the constitutional regulations of search and seizure, Amendment IV, the California Civil Code, section 47 (4) and the Federal Regulations for Client Confidentiality. C.T. 8.

Respondents have submitted only one piece of evidence to the courts — a two minute, five second ABC "DUB" tape made in Hollywood, on September 29, 1987.

A declaration of Roger Bell, an eleven year veteran employee C.T. 186-7, swore to a one hour tape preservation system at KABC-TV/ABC. The pre-trial court was later informed that no such system existed, giving rise to the possibility of perjured testimony.

The BELL declaration clearly and convincingly proves how much the tape presented to the courts was edited:

— *Fifty-seven (57) minutes and Fifty-five (55) seconds . . . CUT-Edited OUT.* The "DUB" ABC Tape is dated September 29, 1987, exactly five (5) years after Appellant requested the tape. It was submitted to the courts, minus the opening and closing remarks of the anchorperson and

is only two (2) minutes and five (5) seconds in length, a minute portion of the ONE HOUR TAPE, a permanent preservation of all ABC newcasts, described by Bell as only being available to KABC-TV staff on an "as needed" basis.

Two of the most important mood setting pieces for the viewing public:

— *anticipation* for the viewing public of the upcoming segment while the commercial playing

— *lingering atmosphere* for the viewing public, after The Broadcast

the opening and closing remarks of the anchorperson were simply deleted by ABC from the tape (2:05 seconds) presented to the courts as a true and correct copy of a one hour preservation tape. An even more serious matter has arisen in the loss of the anchorman's portion of the one hour tape. The sworn declaration of insider Bell, who describes the failsafe system of tape preservation at ABC appears at C.T. 186-7. Two attorneys contradicted Bell in their testimony in court. In effect the court was told that Bell had not accurately described the situation at ABC. The public is left wondering whether any tapes are kept at all as Bell states. (See O'Connor and Teele testimony.)

> The Court: What about the whole program? Don't you tape the whole program?
>
> Mr. O'Connor: No, your honor. The tapes are not preserved in that manner.
>
> The Court: You should have put them together then. This is very poor — doesn't help your situation any to hold back something that could give some comfort to her. I mean this is a suggestion.

> Ms. Teele: Unfortunately, your honor, they don't even preserve the anchorperson's portion of the tape, so that has been lost.
>
> The Court: Well, is this the very first item on that tape?
>
> Mr. O'Connor: Your honor, this is the tape that was presented to the court as it was maintained.
>
> The Court: Why don't you — you should get the rest of it.

As stated in the case of *Brown & Williamson Tobacco Corp. v. Walter Jacobson and CBS, Inc.*, Nos. 86-2474 and 86-2475, this Court's decision on destruction of vital evidence in this instant case, the destruction of evidence is not protected by the broad interest privilege claimed by Capital Cities/ABC, Inc.

Respondents claim to have made contact, by telephone, with two power brokers, one, Sarah J. ("Sallie") Davis, director State Department of Alcohol and Drug Programs, ADP, who spoke of "concerns" with the financial "management of P.T.P (I-THE AMERICAN CITIZEN, INC., I-TAC) but failed to provide corroborating evidence such as affidavits or declarations from the recipients. The courts were provided only the word of Black who had violated the constitutional regulations of search and seizure to secure the information shown on the Broadcast. Appellant documents the existence in Los Angeles County of a "cozy" quid pro quo relationship between those entrusted with the protection of the public interest and the power-brokers.[4] News leaks, instead of investiga-

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[4] Public Document — *Sacramento Bee*, November , 1987. *How the press blew Iranamok* • Coziness with sources. Some journalists were coopted by the very people who were doing the dirty work. . . . • Time

tions by news media would explain the total arrogance of KABC/ABC, Inc.[5]

The legislature and the governor of the state had handled the exact problem Black solved by saying she called a local power broker and was directed to the state to an appointee of the governor. Effective January 1, 1981 a bill had been signed into law, Senate Bill 19417, which prevented Sallie from taking calls from reporters seeking information on drug programs and which Sallie was mandated by the governor to implement. The senate bill established a single drug abuse administrator in each one of the 58 state counties and all questions were to be directed to them. For Sallie to have accepted Black's call would have meant open defiance of a mandate from the

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pressure. Journalists were busy, and their editors were impatient. The media has a short attention span . . . 'A reporter ought to do more than wait for an official arm of government to investigate or for somebody else to leak a story, although too many editors feel safer when stories come this way.' "

[5] *Public Document* Minutes, LOS ANGELES COUNTY NARCOTICS AND DANGEROUS DRUGS COMMISSION MINUTES, date August 5, 1981 Page 4. Message: Commissioner Beckler said he has participated as a member of various alcohol and drug program groups and knows it is almost impossible for any bureaucracy not to sometimes be insensitive to the needs of the community; this is inevitable but forgivable. He didn't think the letter from the providers was helpful — it took him several readings just to figure out what it was talking about. However, he felt it was simply a symptom of the community's *fear*. He felt sometimes the Commission was possibly not only supportive, but *"cozy"* with the DAPO; it should use care not to be just supportive, but should also be a watchdog. We must constantly strive to keep open lines of communication between providers and the DAPO, he said.

governor as well as violation of the California Administrative Code protecting service provider privacy rights.[6]

These statements from respondents are false.

Boyd provided documentation by the government auditor of I-TAC, in a signed and witnessed affidavit that the "concerns" of Sallie upon which respondents base their case are little more than fiction. Sallie's "concerns" were written in two letters to I-TAC dated May 6 and May 12, 1982. They "concerned" the corporate status of I-TAC and were not involved with the financial management of the corporation. The "concerns" of Sallie were disposed of as being totally without substance. See App. H.

Following is a letter from ADP Audit Section requesting a time to audit the financial management of I-TAC during the time of the Broadcast. The letter is dated July 22, 1982.[7] Boyd has provided documented proof that there

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[6] Public Document — Senate bill No. 1841 Introduced by Senators Green and Watson on March 6, 1980, An act to amend Sections 11754, 11961, 11962, 11963, 11981 . . . of the Welfare and Institutions Code, relating to drug abuse . . .

"SEC. 5. Section 11962 of the Health and Safety Code is amended to read:

11962. The board of supervisors shall designate a *drug program adminstrator* and shall determine the administrative level, responsibility, and authority of such a position . . . He or she shall administer all *drug programs funds allocated to the county under this chapter. All drug program funds allocated by the department to programs or projects within the county shall be expended only with the prior certification by the drug program administrator, the county advisory board on drug programs, and notification to the board of supervisors that the program allocation is consistent with the priorities in the approved county Short-Doyle drug program plan.*"

[7] Public Document, Letter, Department of Alcohol and Drug Programs, July 22, 1982, CERTIFIED MAIL: PO6 7461325 to Ms. Inez

was no "month-long" audit of the 1982 ADP contract at the time of the Broadcast to validate an ABC "Investigative Report" as respondents claim. ADP never audited I-TAC's 1982 contract, the contract is still open and due and payable, validated by a Sacramento Court order. There was no special-interest privilege for Capital Cities/ABC, Inc., no need for the public to know. The audits were of old contracts. ABC was aware that the viewers were being misled. Appellant documents with a dated "9-3-87" defendants', APP E.

It was a matter of public record that the "Coalition" in Southeast which appellant coordinated seven years earlier in 1973-74 had been replaced by the group below: Sallie was a member and knew Boyd was not, at the time of Broadcast.

A public document letter — See App F. SOUTHERN CALIFORNIA ASSOCIATION OF PROGRAM DIRECTORS, 15519 CRENSHAW BOULEVARD, GARDENA, CALIFORNIA 90249, (213) 679-9126, July 11, 1981, Ms. Sally Davis, MSW, Director, ADP ".... The Southern California Association of Program Directors wishes to formally state its opposition to subvention of Federal block grant dollars to the counties for the following reasons: .... /s/ Chairperson."

See App. F copy of a November 20, 1973 sign-in sheet indicating that everyone in attendance represented a

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C. Boyd, Director I-TAC, Inc. RE: AUDIT OF CONTRACT NUMBER D-0167-80, A-1. We have recently completed the audit of Contract Number D-0167-80, A-1 for the period January 1, 1981 to December 31, 1981. At *the present time the Department plans to audit the remainder six months of the contract, January 1, 1982 through June 30, 1982.* /s/ Pilar Troy
Assistant Manager
Audit Section

professional group. These documents were supplied to respondents and the courts.

The entire basis of respondents' case is false.

This case concerns a morally flexible state agency director, who, at all times had both a federal mandate and a state mandate under the state *FORMULA INDEX OF NEED*, Senate Bill 714, of federally required matching funds, to provide public funding for Project Total Push: AFTERCARE, parent company — I-THE AMERICAN CITIZEN, INC., (I- TAC) — as P.T.P. was prioritized Number One, by the community planners for such funding during the entire seven years of its existence, 1975 to 1982.

REASONS FOR GRANTING CERTIORARI

I

CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT BETWEEN THE DECISIONS BELOW AND THE DECISIONS OF THIS COURT.

This Court has stated in *Roth v. United States*, 354 U.S. 476, 484, "The general proposition of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people'."

The matter of how the states have implemented these constitutional mandates is the matter at issue in this instant case.

The Court of Appeal, Opinion App. A, decided this instant case on the basis of respondents request for

Summary Judgment "... is appropriate because the Broadcast statements are privileged under Section 47(3) of the California Civil Code."

Agreeing with respondents, above, the Court of Appeal opined "..... Finally, it appears that the statements broadcast by Black were privileged under subdivision 3 of section 47 of the Civil Code...." The Court of Appeal defined malice as "... that state of mind arising from hatred or ill will..."

However, the Supreme Court of the State of California disagreed with both the pre-trial court and the Court of Appeal, addressing the issue in the not yet reported *Brown v. Kelly Broadcasting Co.* S005126, Opinion :

"... The sole issue in this case is whether Civil Code section 47, subdivision 3, affords a broad privilege, sometimes referred to as a "public-interest privilege" to the news communications industry (news media) to make false statements regarding a private individual."..... as we will explain, there is no such privilege for the news media under section 47(3). We hold that a publication or broadcast by a member of the news media to the general public regarding a private person is not privileged under section 47(3) regardless of whether the communication pertains to a matter of public interest. Thus, a private-person plaintiff is not required by section 47(3) to prove malice to recover compensatory damages."

Until this Supreme Court Opinion, California was one of only three states to still hold such a privilege over private citizens. There was no trial of this case on its merits and therefore, appellant did not benefit from this decision. The carelessness with which KABC-TV/ABC, Inc. prepared the Broadcast gives a clue as to exactly how heavily the news media in California depended on the

state statute to bail them out of libel suits — and how well the technique worked. The constitutional rights of citizens, in the meantime, were being trampled.

The Opinion of the court of last resort on this matter is quite lengthy. The pertinent parts of the decision are reproduced for the Court, herein; at pp 4.

DISCUSSION

The broad public-interest privilege claimed under section 47(3) is not constitutionally mandated or appropriate.

In recent years, the common and statutory law of defamation has been supplanted in many respects by decisions of the United States Supreme Court construing the federal Constitution. Thus, although the question before us can be answered by statutory construction, it is best understood in light of the high court's decisions. Defendants do not contend those decisions mandate a privilege under section 47(3) but argue that they provide policy support for a statutory public-interest privilege for the news media under section 47(3). We disagree. The United States Supreme Court has construed the federal Constitution as imposing certain limitations on plaintiffs seeking to recover for defamation. The high court, however, has expressly rejected the privilege sought by defendants in this case.

As recently as 1957, the court reiterated that, "[T]he unconditional phrasing of the First Amendment was not intended to protect every utterance. *This phrasing did not prevent this Court from concluding that libelous utterances are not within the area of constitutionally protected speech.*" (Roth v. United States (1957) 354 U.S. 476, 483, citing Beauharnais v. Illinois (1952) 343 U.S. 250, 266.)

Only seven years later, however, the court found for the first time that libel is protected by the federal Constitution under certain circumstances. . . . 418 U.S. *Gertz v. Robert Welch, Inc.*

Thus, *Gertz* holds that the public-interest privilege advocated by defendants under section 47(3) is not required by the federal Constitution. Moreover, *Gertz* refutes defendants' policy argument that federal constitutional protections for freedom of the press weigh in favor of creating a public-interest privilege in defamation actions by private-figure plaintiffs. The *Gertz* court carefully balanced the competing values of society's interest in a free press and society's need to prevent and redress attacks on reputation and found that a public-interest privilege is not constitutionally required.

Appellant in the Petition For Review to the court of last resort approached the issue of privilege for respondents from the same direction as that court's decision, making it the sole issue of the petition:

A. Basis of Petition

This petition for a review centers around one, single, key area:

> The principles, well settled in law that identify communications of a broadcaster, protected by
>
> **PRIVILEGE**
>
> Appellate submits that the privilege of the First Amendment of the United States Constitution was extended to the two minutes, five second, ABC Inc., *Eye Witness News* "DUB" tape, in *error*, and according to the principles, well-settled, in law, that pro-

tect boradcasters' communications, the granting of summary judgment to that tape should be reversed.

California Supreme Court Opinion Continue

Shortly after *New York Times, supra*, 376 U.S. 254, the court further restricted the common law of defamation by holding that "public figures" — like public officials — must also prove malice under the *New York Times* standard to recover for defamatory criticism. (Curtis Publishing Co. v. Butts (1967) 388 U.S. 130, 162-165 (conc. opn. of Warren, C.J.). Because plaintiff in the present case is not alleged to be a "public figure," we need not discuss the court's explanations of that term in *Curtis* and subsequent cases. *It is sufficient to note that, "... a court must focus on the nature and extent of an individual's participation in the particular controversy giving rise to the defamation.' ... A private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention."* (Wolston v. Reader's Digest Assn., Inc. (1979) 443 U.S. 157, 167; Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244, 254, fn. 6.)

The State Supreme Court of California concludes its historic opinion removing the privilege for the news communications industry to print public-interest, false news about private citizens providing, at pp 50-55, the means already at hand to prevent long, costly law suits for the press and the news media:

CONCLUSION

We find no support in the language or history of section 47(3) for the broad public-interest privilege claimed by defendants. Sound public policy reasons also weigh heavily against such a privilege.

Because we find there is no such privilege in this case, we agree with the Court of Appeal that summary judgment was improper. The judgment of the Court of Appeal is affirmed with directions to remand this action to the trial court for further proceedings in accordance with the views set forth in this opinion.

DATED: August 1, 1989

Respectfully submitted,

INEZ C. BOYD
For Petitioner In Propria Persona

II.

CERTIORARI SHOULD BE GRANTED TO RESOLVE AN IMPORTANT AND RECURRING CONSTITUTIONAL QUESTION LEFT OPEN BY THIS COURT'S DECISIONS

This Court has decided "... debate on public issues should be uninhibited ... robust. ... " *New York Times Co. v. Sullivan,* 376 U.S. at 270

> "... the use of calculated falsehood, however, would put a different cast on the constitutional question. Although honest utterance, even if inaccurate may further the fruitful exercise of the right of free speech, it does not follow that the lie, knowingly and deliberately published ... should enjoy a like community."

Garrison v. Louisiana, 379 U.S. 64, 72

Appellant respectfully requests a focus from this Court on the issue that the information for the Broadcast was secured illegally, that the information passed to the viewing public was false, that no ABC "Investigative Report" was ever submitted in evidence to the courts below and that the tape (2:05) was a "DUB", made at a Hollywood address — a fraud, a hoax, after an eleven year ABC veteran swore that there were ONE HOUR TAPES of every news broadcast stored, only given out on an "as needed" basis. The 8 million viewing audience is left to wonder whether there are any records kept at Capital Cities/ABC, INC., at all. The remarks of the anchorperson on the Broadcast, July 21, 1982 were destroyed at KABC-TV.

> This Court has stated, *THE FLORIDA STAR v. B.J.F.* No. 87-329 Opinion:
>
> "The tension between the right which the First Amendment accords a free press, on the one hand and the protections which various statutes and common-law doctrines accord to personal privacy against the publication of truthful information, on the other, is a subject we have addressed several times in recent years. *Our decisions in cases involving government attempts to sanction the accurate dissemination of information as invasive of privacy, have not, however, exhaustively considered this conflict.* On the contrary, although our decisions have without exception upheld the press' right to publish, we have emphasized each time that we were resolving this conflict only as it

arose in a discrete factual context."[8] (Emphasis added)

Chaplinsky v. New Hampshire, "Calculated falsehood falls into that class of utterances which ". . . are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." 315 U.S. 568, 572

This Court is respectfully requested to note that because respondents submitted only one single piece of evidence to the courts below and failed to address the two essential elements of proof of a plaintiff's classification as a "public figure":

1— *identification of a specific public controversy*

2— *voluntariness* . . . "thrust" oneself ". . . into the vortex . . .",

at the time of the Broadcast, the program constituted a personal attack upon the plaintiff.

Boyd was not proven to be a "public figure" by factual evidence but was simply stated to be one and by repetition of this statement became one for all purposes, when, as a point of fact the statement was easily proven false by evidence submitted for the record by Boyd. App. E, Declaration of a sitting judge in L.A. County, who docu-

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[8]The somewhat uncharted state of the law in this area thus contrasts markedly with the well-mapped area of defamatory falsehoods, where a long line of decisions has produced relatively detailed legal standards governing the multifarious situations in which individuals aggrieved by the dissemination of damaging untruths seek redress. See, *e.g., New York Times Co. v. Sullivan,* 376 U.S. 254 (1964); *Garrison v. Louisiana,* 379 U.S. 64 (1964); *Henry v. Collins,* 380 U.S. 356 (1965); *Rosenblatt v. Baer,* 383 U.S. 75 (1966); *Time, Inc. v. Hill,* 385 U.S. 374 (1967).

ments that Boyd did not "found" PTP, Kedren did — Circa 1975.

388 U.S. 161

The Court has stated: *Curtis Publishing Co. v. Butts,* "It should also be noted that prior to publication the Saturday Evening Post had been notified both by Butts and his daughter that the material about to be printed was false. Despite these warnings, and the fact that no member of the staff had ever seen Burnett's crucial notes, no further efforts at investigation were undertaken prior to publication. It might indeed be argued that this conduct would have sufficed, under proper instructions, to satisfy even the actual malice standard of New York Times, the notice to the Saturday Evening Post being considered as furnishing the necessary mental element." New York Times, supra, 376 US at 287, 11 L ed 2d at 710, 95 ALR2d 1412.

The false statements from respondents include denying information sworn to in declarations and not being checked by the courts below. Plaintiff's attorney, in 1982, (he was compromised by respondents) called ABC and told KABC-TV of a possible error. Plaintiff called and talked with the Assistant News Director — these were all simply denied. Without a trial there was no recourse for plaintiff. C.T. 307-8.

443 U.S. 103

This Court has stated, *Smith v. Daily Mail Publishing Co.,* "... The 'Daily Mail' principle does not settle the issue of whether, in cases where information has been acquired unlawfully by a news paper or by a source, government may ever punish not only the unlawful acquisition but the ensuing publication as well."

Respondents reported the wrong dates for the national BLOCK GRANTS, placing them in the 1970's when these were a part of the new administration, July 21, 1982

> " . . . From the community-based/grass roots funding in the late 1960's, *to the federal block grants of the 1970's,* TO THE LAISSEZ FAIRE approach of the present administration. . . " *CT 154*[9]

Respondents from ABC/KABC-TV, the #1 television news station in Southern California, by their own sworn declarations turn the key that upsets and unravels their own intellectually dishonest theorizing on a limited purpose public figure as the term is manipulated to fit appellant:

" . . . I have never met Boyd and I had never communicated with, or even heard of her, before the date of the disputed broadcast . . . " Thomas Van Amburg, President and General Manager of KABC-TV. C.T. 173

" . . . I have never met Inez C. Boyd and I never communicated with or even heard of her before receiving the July 14, 1987 (1982) telephone call from Evans." Angela Black, alleged "investigative" reporter at KABC-TV. C.T. 171

" . . . I have never met Inez C. Boyd and I had never communicated with, or even heard of her before KABC-TV began its investigation into allegations that had been

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[9]Appellant asserts that the present administration is the Block Grant Law. The Block Grant Law belongs to the '80's — July 1, 1982. Public Document — a letter from the State Department of Health, to drug programs, dated June 1, 1982, SUBJECT: BLOCK GRANTS — explains the *STATE'S ROLE IN RESOLVING COUNTY PROVIDER ISSUES* thus, refuting respondent's claim that the Block Grants were a product of the Circa 1970's and 1982 was Laissez-faire time.

made against her by her ex-employee, Ronald Evans ("Evans") Kenneth Nelson, News Director, KABC-TV C.T. 178

Respondents cannot have it both ways. Either appellant is a widely known public figure who "thrust herself into the vortex of a public controversy," or appellant is an out-of-public-view and private person, who is unseen, unheard-of and unknown, by Southern California's NUMBER ONE Nielsen rated ABC, INC./KABC-TV news station's top brass, with an eight (8) million person potential viewing audience.

The most damaging claim made by respondents is that appellant has access to the news media to refute and discuss the false statements in the Broadcast. A more accurate statement about appellant and the press is that any "news" about appellant that reaches the reading or viewing public is strictly accidental and if caught in time will never leave the editorial room.

KABC-TV/ABC was on a mission. They believed the news leak was "hot". No investigative report ever surfaced with corroborated facts, only rumor and gossip. See Opinion, pp. 5, 6.

Appellant was familiar with efforts to prevent minorities from taking credit for their own creative writings. Such writings might be passed along to a friend of those who read for publication. See letter, App. G documenting this theory. The letter is self-explanatory. Had appellant been a public figure who had access to the news media she would have, before March 11, 1980, and the reluctant offer made by B'nai B'rith Anti-Defamation to read her next research for "possible publication", this matter would long ago have been settled. A legal agreement had been reached between two attorneys. The legal agreement was

never honored. Appellant was on the verge of publishing PTP's AFTERCARE research when the break-in by Black occurred at the program.

Appellant, on July 21, 1982 was a private citizen. The right to publish — the freedom to do research — is constitutionally guaranteed to every American. It is this aspect of this instant case upon which appellant respectfully seeks a focus from this Court.[10]

III.

CERTIORARI SHOULD BE GRANTED FOR MORE INPUT FROM THIS COURT ON THE STATUS OF THE BASIC CONSTITUTIONAL RIGHTS OF PRIVATE CITIZENS — FREEDOM OF SPEECH, DUE PROCESS — IN THE ON-GOING CLASH BETWEEN PRIVACY AND FREE EXPRESSION FOR THE PRESS

420 U.S. 491

Cox Broadcasting Corp. v. Cohn, this Court has stated, " . . . Indeed, in Cox Broadcasting we pointedly refused to answer even the less sweeping question 'whether truthful publications may ever be subjected to civil or criminal liability' for invading 'an area of privacy' defined by the state. Respecting the fact that press freedom and privacy rights are both '*plainly rooted in the tradtions and signifi-*

[10]Appellant had written her masters thesis on St. Louis school desegregation. Every national magazine wanted to publish. Because of Appellant's trust and faith in B'nai B'rith she gave the thesis to that organization. The trust was betrayed. Any chance that appellant might have become a public figure disappeared with this one act. So did any "access to the press" — Circa 1960. To cover for this lapse in morals and ethics, the victim has had to pay with enforced anonymity and has become a very private citizen.

cant concerns of our society, we, instead focused on the less sweeping issue . . .' "

(emphasis added)

Plaintiff is not a limited purpose "public figure" as claimed by respondents.

The Court of Appeal stated, at pp 10: "Moreover, Boyd is a 'limited purpose public figure'." No reference was made to the two essential elements, of a public controversy and voluntariness, *at the time of the Broadcast.*

The Court of Appeal further states at p 11: "*On the topic of drug programs and funding,*" Boyd states that there "*were 600 people who attended 11 weeks of seminars, just to 'hear' her 'expound' about her ideas on drug programs and funding*'." This statement is completely false. Whether it should determine Plaintiff's future is a question this Court is respectfully requested to consider. Capital Cities/ABC, INC. had become a rumor mill. As the false information passed through the lower courts, having no basis in fact, the players changed. As the newspaper article, herein, clearly points out, the 600 people, of all religious faiths, had gathered in Whittier, as a *Study Group to discuss prejudice* as reported in the *Kerner Report:* CIRCA JUNE 1, 1968 — fourteen (14) years before the Broadcast. Appellant did not "found" P.T.P. The Southeast Coalition did, as a cooperative gesture — all programs referred their clients to P.T.P. for Aftercare services. There was no controversy about the need for aftercare, at the time of the Broadcast.[11]

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[11]Public Document: Newspaper Article, *June 1, 1968* Whittier Study Group Seeking Social Reality — Physician's Wife Spurs Effort to Learn How to Resolve Problems Scientifically — Society has grown up pretty much by the law of the jungle and it is time today to

There is a clash between the freedom of speech protection for the news media and the privacy rights of the citizen. In this instant case the clash is with appellant's duties as a provider of health services to the state from a private corporation employee, for twelve (12) years. The public record at the state agency, ADP, the state tax office, the Internal Revenue Services will all show that these services were not volunteered. Without this essential element being proven by respondents appellant is not a limited purpose public figure.

The Opinion, App. A, 9A, states: " . . . . she (appellant) cannot truly identify any false statement of fact made during the Broadcast. . . . " Appellant identifies several such statements — false — made during the Broadcast:

First, Opinion 6a, App. A.

Angela Black: " . . . . I-TAC lost its state funds on June 30th . . . ."

This statement is false.

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create a scientific society, according to the wife of a Whittier physician who also happens to be a trained sociologist.

Mrs. Joseph F. Boyd Jr. is the guiding spirit behind an intriguing study course on "Riots, Revolution, Revolt and Me," being given Mondays at 7:30 p.m. in Whittier First Methodist Church, Bailey St. at Friends Ave.

She calls it the "3 R's" study course.

"The real purpose is self-examination," said Mrs. Boyd.

Well, many ask, am I a racist, or am I not? What is a racist?

. . . . The courts have also, especially in libel cases, investigated the plaintiff's position to determine whether he has a legitimate call upon the court for protection in light of his prior activities and means of self-defense. See Brewer v. Hearst Publishing Co., 185 F.2d 846; Flanagan v. Nicholson Publishing Co., 137 La 588, 68 So 964. . . .

Correction: I-TAC holds a valid, written contract with the State Department of Alcohol and Drug Programs, Sallie, director, Circa, September 30, 1982. The contract was never closed out by Sallie.

Second, Opinion 6a App A.

Angela Black: ". . . . Employees are working under contract *without pay pending court hearings. . .*"

This statement is false.

Correction: Appellant managed five contracts, from the same funding source, renewable annually, on the basis of good to excellent audits whose record is in a permanent public file (410) at the state. No employee of I-TAC ever missed a pay period. There was no court hearing pending, July 21, 1982. There was no ABC investigative report which provided evidence other than that public record.

Third

Angela Black: "The alcohol and Drug Programs has asked the Attorney General's Office to investigage a possible misuse of funds. This statement is false. ABC did *not* report the results of such a request nor did ABC show responsibility and retract the statement on the air. There was no audit of the I-TAC contract for the current year on July 21, 1982, in progress. No matter of public interest and. therefore, no reason for the Broadcast.

The California Supreme Court in comparing the protection for the private citizen at the state level with that enjoyed at the federal level continues in its Opinion:

> "Article I, section 2, subdivision (a) of the California Constitution states, "*Every person may freely speak, write and publish his or her sentiments on all* subjects, being responsible for the abuse of this right.

A law may not restrain or abridge liberty of speech or press.

403 U.S. at 46-47

. . . private individual does not have the same degree of access to the media to rebut defamatory comments as does the public person and he has not voluntarily exposed himself to public scrutiny.

While these arguments are forcefully and eloquently presented, I cannot accept them, for the reasons I stated in *Rosenbloom:*

> "The *New York Times* standard was applied to libel of a public official or public figure to give effect to the [First] Amendment's function to encourage ventilation of public issues, not because the public official has any less interest in protecting his reputation than an individual in private life. While the argument that public figures need less protection because they can command media attention to counter criticism may be true for some very prominent people, even then it is the rare case where the denial overtakes the original charge. Denials, retractions, and corrections are not 'hot' news, and rarely receive the prominence of the original story. When the public official or public figure is a minor functionary, or has left the position that put him in the public eye . . . , the argument loses all of its force. In the vast majority of libels involving public officials or public figures, the ability to respond through the media will depend on the same complex factor on which the ability of a private individual depends: the unpredictable event of the media's continuing interest in

> the story. Thus the unproved, and highly improbable, generalization that an as yet [not fully defined] class of 'public figures' involved in matters of public concern will be better able to respond through the media than private individuals also involved in such matters seems too insubstantial a reed on which to rest a constitutional distinction." 403 U.S. at 46-47.

The court of last resort continued its discussion of the parameters of the limited purpose public figure which were ignored in this instant case, *Shirley Brown v. Kelly Broadcasting Co.* S 005126 at 50.[12]

Two important officials in California have announced intentions to address the matters involved in this instant case:

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[12]Although we conclude there is no public-interest privilege under section 47(3), we believe it appropriate to note defendants' contention that *plaintiff's work as a contractor was a matter of public interest because the work involved public funds*, i.e., *the money for the work was lent to the homeowner by a public agency. Even if there were a public-interest privilege under section 47(3), it would not arise on these facts.* In Hutchinson v. Proxmire (1979) 443 U.S. 111, *the court held that "concern about general public expenditures" is insufficient by itself to convert a recipient of public funds into a public figure who must show malice to recover for defamation.* (*Id.*, at p. 135.) It would be inconsistent with the logic of *Hutchinson* to find that the receipt of public funds by itself creates a public interest that requires a private person to prove malice under section 47(3). Moreover, the use of government funds is pervasive and affects almost everyone, directly or indirectly, in one way or another. For example, under defendants' view, a recipient of a Veterans Administration home loan or a bank customer whose deposits are federally insured might have to prove malice. *A mere connection with public funds is too broad a basis on which to require a showing of malice.*"

— *Attorney General Van de Kamp,* on "CLEAN THE ETHICS SWAMP" (Sacramento Bee, July 1989)

> "The plain truth is that we have allowed government and politics in California to sink into quicksand. . . . Yet we naively expect public officials to crawl through that swamp *ON A DAILY BASIS AND COME OUT CLEAN AND UNSOILED.* . . . I am here today to tell you that if we want clean government, it's time to drain the swamp."

— *Attorney Robert D. Raven,* President of the American Bar Association, ABA, on the lack of access of the poor to the courts: (Sacramento Bee, January 1989)

> "The system is not working. At least 80 per cent of the legal needs of the poor are not being met . . .
>
> "THE CONSTITUTION IN THE PREAMBLE SAYS 'TO ESTABLISH JUSTICE' . . . IT DOESN'T SAY 'TO PURSUE JUSTICE' OR 'TO DO THE BEST YOU CAN.' "
>
> Robert D. Raven, President ABA

This Court in granting Certiorari, in this instant case, has an opportunity to impact, favorably, the sorry status of national morals and ethics, and the conditions affecting access of the poor to the courts in one of the largest states in the nation and at the same time invigorate the ongoing efforts of two of its most powerful lawyers.

Dated: August 1, 1989

Respectfully submitted,

INEZ C. BOYD
For Petitioner In Propria Persona

APPENDIX A

NOT TO BE PUBLISHED

2d Civ. No. B033544

IN THE COURT OF APPEAL
OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

INEZ C. BOYD,
Plaintiff and Appellant,
v.
ANGELA BLACK, et al.,
Defendants and Respondents.

(Super. Ct. No. SEC 43543)

APPEAL from a judgment of the Superior Court of Los Angeles County. J. Kimball Walker, Judge. Affirmed.

Inez C. Boyd, in pro. per., for Plaintiff and Appellant.

Christensen, While, Miller, Fink & Jacobs, Michael J. O'Connor and James E. Curry, for Defendants and Respondents.

Plaintiff/appellant Inez C. Boyd ("Boyd"), appeals from a summary judgment granted in favor of defendants/respondents Angela Black, Thomas Van Amburg, Kenneth Nelson (hereinafter collectively "respondents") and Capital Cities/ABC, Inc. ("ABC").[1]

[1]Capital Cities/ABC., Inc., was erroneously sued as ABC and KABC Television.

FACTUAL BACKGROUND

Boyd is the former director of Project Total Push: Aftercare ("PTP"),[2] a publicly funded drug and alcohol aftercare treatment facility located in Los Angeles. In July 1983 she filed a complaint for damages against Angela Black ("Black"), a reporter for KABC-TV,[3] Thomas Van Amburg, the former station manager at KABC-TV, Kenneth Nelson, the former Assistant News Director at KABC-TV and Capital Cities/ABC, Inc. for slander arising from a KABC-TV investigative broadcast on July 21, 1982, as part of its 5 p.m. "Eyewitness News" program.

The events leading up to this broadcast include the following: On July 14, 1982, Black received a telephone call from a Ronald Evans. Evans told Black that he was a former employee of PTP and that he believed Boyd was misusing PTP's public funds. He also stated that he had not been paid for work performed at PTP during January and February of 1982. Because of the public interest and concern over possible misuse of public monies and possible mismanagement of a publicly-funded drug and alcohol rehabilitation program, KABC-TV began an investigation into Evans' allegations. On July 19, 1987, Black telephoned the Department of Alcohol and Drug Programs ("ADP"), which is the state agency responsible for the funding, supervising and auditing of PTP, and spoke with ADP's Director, Sarah Davis. Davis told Black that ADP had conducted a month-long audit of PTP in June 1982

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[2]PTP was operated under the auspices of I-TAC (I-T, American Citizen, Inc.), a nonprofit, community-based corporation that was founded and directed by Boyd.

[3]KABC-TV broadcasts over Channel 7 in the greater Los Angeles area.

and that the results had caused "some concern." The auditors had found that PTP was not maintaining proper accounting systems, and there had been "many unrecorded cash expenditures" at PTP during the audit period. As a result, ADP was going to ask the Attorney General to investigate a possible misuse of public funds at PTP.

On July 19, 1987, Black requested a personal interview and Boyd "tentatively agreed" to meet on July 22nd. On July 21st, Black visited the PTP offices with a camera crew. Just prior to the visit, Black interviewed Evans. Black also interviewed Cecil Miller, a PTP counselor, who confirmed that a month-long audit had recently been conducted at PTP. He also told Black that before the audit, client records had been missing for more than one month. Black also spoke to Boyd and asked for an interview that afternoon. Boyd refused and suggested she speak with her attorney, Errol Gordon. Later, Boyd was again offered, through her attorney, an opportunity to appear on the air and respond to the allegations made against her. She refused.

On July 21, 1982, the investigative report was aired. In her complaint for slander, Boyd alleged that Black had stated, on camera, "the State Department of Alcohol and Drug Programs would have charges of fraud filed the next day against the plaintiff citing mismanagement of public drug abuse monies at the program and PTP delivery of poor health care to the clients."

Respondents and ABC moved for summary judgment on the grounds that (1) there is no genuine issue as to any material fact in the complaint since the alleged defamatory statements were never made; (2) the contents of the broadcast are affirmatively protected by the First Amendment because Boyd was and is a "limited purpose

public figure;" and (3) the broadcast was privileged under Civil Code Section 47, subdivision 3.

Attached to the motion for summary was a video tape copy[4] of the broadcast and a transcript of the video tape.[5]

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[4] Roger Bell, the Assistant News Director at KABC-TV, in his declaration, stated that he examined the tape and "to the best of [his] knowledge," there was "absolutely no alteration" of the tape and the attached copy "represents a complete and accurate representation" of the broadcast. He also stated the "standard procedure" used for preserving the tapes of news stories.

[5] According to the transcript, the following statements were made during the Broadcast:

"ANGELA BLACK: I-TAC is a state-funded drug- rehabilitation center. One former employee says its director, Inez Boyd, is mishandling the money. The Alcohol and Drug Program in Sacramento funds I-TAC. This year the budget was almost $58,000. That's supposed to pay a staff of four and serve forty-five clients. Ron Evans says he worked for I-TAC from September of 1981 to February of 1982. He says his January paycheck had a stop payment put on it, and he was never paid for February either; a total loss of about $1,600. And he says clients are not being served as claimed.

"RON EVANS: And I began to feel that it was just terribly wrong, that the public was being ripped off, that the people in the area that could resume, even use the service, were being ripped off also.

"ANGELA BLACK: I went to I-TAC offices to get their side of the story this afternoon. The director was not in. An employee called her on a telephone. She said she was not available for an interview today. One employee would go on camera. He said a month-long audit of I-TAC was conducted recently, but before that, the records of the clients had disappeared.

"ANGELA BLACK: How long have the records been missing?

"CECIL MILLER: I don't really know. I know that they were gone when I got there. I've been here a little over a month.

"ANGELA BLACK: I-TAC lost its state funds on June 30th. Employees reportedly are working under contract without pay pend-

Both exhibits show that contrary to Boyd's allegations, Black actually stated: "The Alcohol and Drug Program has asked the Attorney General's office to investigate a possible misuse of funds."

At argument on the motion for summary judgment Boyd argued that "the triable issue is whether or not what is on that tape was what was seen and shown on that day." Noting that Boyd's papers "fall so short" since it was just "a statement of [her] position," the court granted the motion for summary judgment.

ISSUES ON APPEAL

Boyd appears in propria persona on appeal. In her brief, she does not directly challenge the bases upon which the summary judgment was granted. Instead she argues: (1) "Attorney(s) with their clients (defendants) each has an independent duty to refrain from intentional tortious conduct;" (2) "The conduct of defendant(s) with their attorneys was sufficiently outrageous to constitute intentional infliction of emotional distress;" (3) "A judgment obtained by extrinsic fraud must be set aside;" (4) "Absolute privilege is inapplicable because the publication was not made to achieve the objects of the litigation and was not made to promote the interests of justice;" (5) "Trial court erroneously decided the question of whether the absolute privilege applied as a factual issue;" (6) "Doctrine of presumed damages."

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ing court hearing. Employees say they really will be sorry to see this program go, but they say they honestly don't think that it will be refunded. The Alcohol and Drug Program has asked the Attorney General's office to investigate ε possible misuse of funds.

"Angela Black, Channel 7 Eyewitness News, South- Central Los Angeles."

DISCUSSION

Much of Boyd's brief is concerned with the development of conspiracy theories that respondents and/or their attorneys conspired to edit or tamper with the video tape of the broadcast and to prevent her from obtaining an attorney to represent her in this action. Although she maintains that the "Dubbed Tape" covered up the altering of the original broadcast with defamatory remarks by Black about Boyd, nothing whatsoever has been presented to the court that would support this theory. These theories are not relevant to the bases upon which summary judgment was granted.

Boyd also discusses intentional infliction of emotional distress which is not a cause of action in her complaint and was not discussed in the court below. She also argues that the judicial privilege of Civil Code section 47, subdivision 2, is inapplicable. However subdivision 2 was not raised by respondents' answer or relied upon in the granting of the summary judgment.

Clearly, from the record before us, the statements alleged to have been spoken by Black on the air were never made. Before granting the motion for summary judgment the court stated to Boyd, "Your papers fall so short and they are contrary — I mean there is nothing in your papers that are very helpful because it is just a statement of your position. You need to have declarations, portions of the transcript, of things of that nature, portions of your deposition."

As conclusively confirmed by the transcript of the video tape, not one of the alleged defamatory statements was actually made in the Broadcast. Black never stated that fraud charges, or any other type of charges would be filed against Boyd. It appears that Black never used the word

"fraud," nor were "charges" ever mentioned. Instead, Black merely stated that ADP was going "to ask the Attorney General's office to investigate a possible misuse of funds at PTP." This statement was not defamatory and in fact was true.

In her deposition, Boyd admitted that she did not view the broadcast at any time after it was aired on July 21, 1982 and that she saw it only once on that date. She also admitted to waiting months after the broadcast date before preparing her complaint. She did not have a copy of the video tape until discovery was conducted in this action. As confirmed in her deposition, the allegations in her complaint were based upon her personal recollection of the broadcast. There is nothing whatsoever in the record to support her allegation that the broadcast was defamatory to her or that the tape is not as was broadcasted. She cannot truly identify any false statement of fact made during the broadcast.

As stated by the trial court, "Well, what in the tape would suggest that the statements that you claim are libelous were made? Nothing in this tape shows anything about that you were being investigated for fraud.

"On the contrary, it says that an employee alleged there has been some mishandling of funds. Mishandling of funds could be putting it in the wrong drawer. That doesn't hardly rise to the kind of thing that gives a cause of action for slander by a news reporting agency."

The summary judgment was properly granted as respondents never made the allegedly defamatory statements. (See *Philadelphia Newspapers, Inc.* v. *Hepps* (1986) 475 U.S. 767, 769.)

Moreover, Boyd is a "limited purpose public figure." Consequently, any statements made without actual malice

are protected by a qualified constitutional privilege under the First Amendment, as extended to state court libel actions by the Fourteenth Amendment. (See *Curtis Publishing Co.* v. *Butts* (1967) 388 U.S. 130, 155; *Gertz* v. *Robert Welch, Inc.* (1974) 418 U.S. 323, 342-345, 351-352.)

In *Gertz,* the court defined two classes of public figures. The first is the "all purpose" public figure who has "achiev[ed] such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts." The second category is that of the "limited purpose" or "vortex" public figure, an individual who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues." (418 U.S. at p. 351.) The "limited purpose" public figure, unlike the "all purpose" public figure, loses certain protection for his reputation only to the extent that the allegedly defamatory communication relates to his role in a public controversy.

From the record, Boyd played a significant role in the controversy surrounding drug treatment programs and their sources of funding. By her own admission in her disposition she has founded two organizations, I-TAC and PTP, and she took an active role in bringing the drug problem to the public's attention. The County of Los Angeles hired her to found the South East Regional Coalition to serve as (1) the coordinator for the South East Regional Coalition on Alcohol and Drug Abuse and (2) the coordinator of the South East Region. On the topic of drug programs and funding, Boyd states that there "were 600 people who attended 11 weeks of seminars just to hear" her "expound" about ideas on drug programs and funding. She appeared on NBC television on a special feature on I-TAC and served on advisory groups to the Board of Supervisors and to the Narcotics

and Dangerous Drugs Commisson. She stated that she "was known from one end of the state to the other."

Clearly, Boyd's ability to properly manage public funds was relevant to the public controversy and properly made a subject of the news. Further, no evidence was introduced showing that Black's statements were made with malice. (See *Reader's Digest Assn.* v. *Superior Court* (1974) 37 Cal.3d 244, 252.) There is absolutely no evidence that respondeets entertained any doubts about the truth of the broadcast. To the contrary, respondents consulted reliable sources and obtained their information from these sources. Black interviewed both Evans and Cecil Miller. Evans was the former PTP Project Coordinator, possessed a key to the PTP office and had access to the program files. Miller was working at PTP on July 21st when Black visited the offices. Boyd, in her deposition, admitted leaving Miller in charge of PTP when she was on vacation because of his ability to handle emergencies and his knowledge of drug treatment. Boyd alleges that Miller and Evans are exconvicts, however, that fact, if true, does not establish malice on the part of Black. Both men were considered reliable by Boyd herself since she entrusted responsibilities at PTP to them. Another source of information was Sarah Davis, then Director of ADP. There was nothing revealed during the investigation to suggest any inaccuracies in the information obtained.

As stated in *Fitzgerald* v. *Penthouse Intern., Ltd.* (1982) 691 F.2d 666, 670, " 'As long as the sources of the libelous information appeared reliable, and the defendant had no doubt about its accuracy, the courts have held the evidence of malice insufficient to support a jury verdict, even if a more thorough investigation might have presented the admitted error.' "

Finally, it appears that the statements broadcast by Black were privileged under subdivision 3 of section 47 of the Civil Code which states, "A privileged . . . broadcast is one made. . . . In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent. . . . " To defeat the subdivision 3 privilege "actual malice" must be shown. (Civ. Code, § 48.) Actual malice is defined in Civil Code section 48a, subdivision 4(d) as "that state of mind arising from hatred or ill will toward the plaintiff; provided, however, that such a state of mind occasioned by a good faith belief on the part of the defendant in the truth of the libelous publication or broadcast at the time it is published or broadcast shall not constitute actual malice."

At issue in the broadcast was whether the director of a publicly-funded drug treatment program in Southern California was responsibly managing tax money entrusted to her for the care of addicts. Clearly, this was a matter of local public interest and concern. (See *Rollenhagen* v. *City of Orange* (1981) 116 Cal.App.3d 414.)[6]

As discussed, *supra*, there is nothing presented in record showing that any respondent or ABC harbored any hatred or ill will or had any desire to injure Boyd at any time. The declarations of the individual respondents establish that none of them knew Boyd personally, and in

---

[6]*Rollenhagen* distinguished *Rancho La Costa, Inc.* v. *Superior Court* (1980) 106 Cal.App.3d 646, in which the court found section 47, subdivision 3 inapplicable to a magazine story linking the owners of a famous resort to organized crime, on the ground that the defamatory matters were only of general or idle curiosity and were published to a national audience.

her deposition, Boyd admits that she never met any of the respondents.

Additionally, the broadcast addressed a matter of public interest and concern. Consequently, the broadcast was the type of communication protection by section 47, subdivision 3, and the court properly granted the motion for summary judgment.

DISPOSITION

The judgment of dismissal is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED

CROSKEY, J.

We Concur:

KLEIN, P.J.

ARABIAN, J.

APPENDIX B

ORDER DENYING REVIEW

OFFICE OF THE CLERK
COURT OF APPEAL
2nd District, Division 3, No. B033544

S009451

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

BOYD, INEZ C.

vs.

BLACK, ANGELA, ET AL.

Appellant's petition for review DENIED.

LUCAS
Chief Justice

APPENDIX C

COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FOR THE SECOND APPELLATE DISTRICT
DIVISION: 3

Inez C. Boyd
4649 Paula Way
Fair Oaks, CA 95628

RE: Boyd, Inez C.
vs.
Black, Angela, Etc.
2 Civil B033544
Los Angeles No. SEC 343543

*** * REMITTITUR NOTICE * ***

Notice is hereby given that the Remittitur has been issued this date and that the opinion, decision or order entered in the above entitled cause on 02/10/89 is now final.

* * Affirmed In Full. * *

____ Appellant __X__ Respondent to recover costs.

____ Each party to bear own costs.

____ Costs are not awarded in this proceeding.

MAY 24, 1989

ROBERT N. WILSON, Clerk

By:
Deputy Clerk

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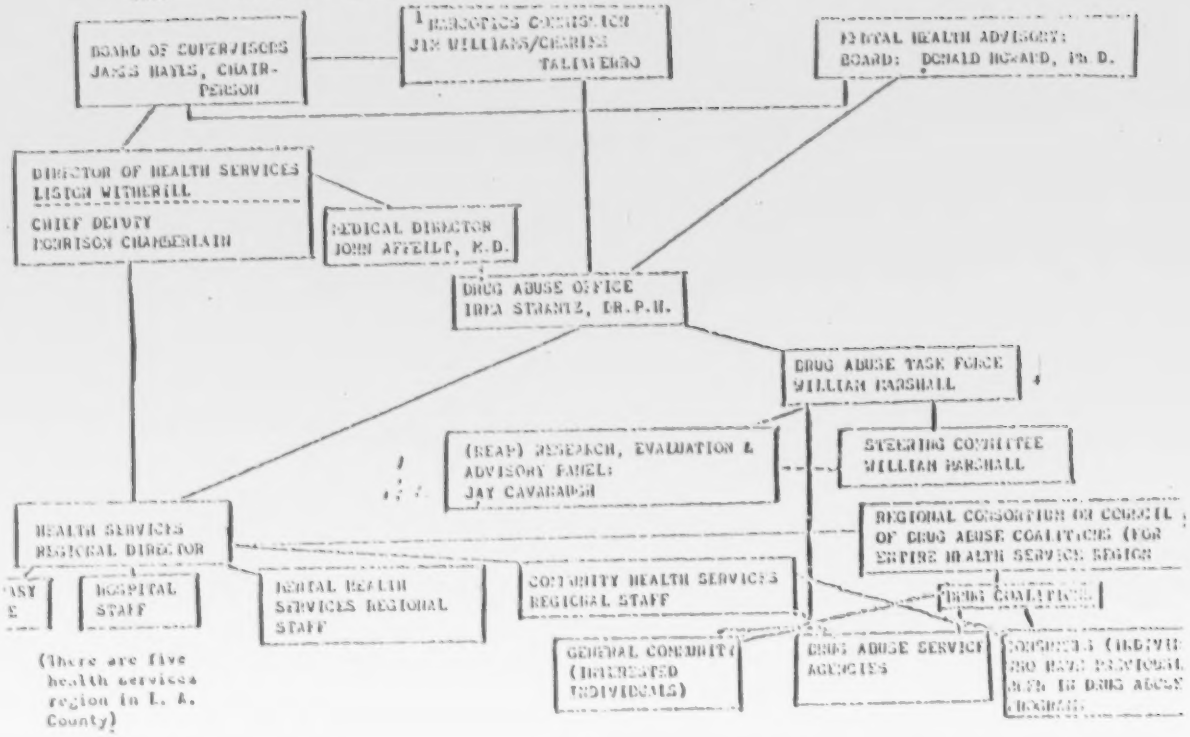
III. [illegible]



(There are five health services region in L. A. County)

(All participants of ethnic or functional coalitions must also be of geographical coalitions.)

Advisory Committee on Drug Abuse (State Mandated)

DEPT. OF HEALTH SERVICES

APPENDIX D-2

DECLARATION OF ROGER G. BELL

I, Roger G. Bell, declare and say as follows:

1. I am the Assistant News Director at KABC-TV, a position which I have held for over four years. I have been employed with KABC-TV in various capacities for a total of eleven years. As Assistant News Director, I am involved in all aspects of News Department management at KABC-TV. I make this declaration based upon my own personal knowledge and, if called as a witness, could and would testify to each of the matters set forth herein.

2. For at least the last eleven years, KABC-TV has had a standard procedure, described below, for preserving the tapes of news stories that are broadcast by the station. This procedure is rigorously adhered to, for among other reasons, so that KABC-TV can maintain a complete, accurate and permanent record of all such stories.

3. Pursuant to this standard procedure, the following steps are always taken by KABC-TV: Initially, a clean copy of each story broadcast on KABC-TV is kept on a separate tape. Within one day of the date of broadcast, each story is dubbed onto a one-hour tape, with other stories that have been broadcast by the station during the same time period. A label identifying the date of broadcast is placed on the side of each one-hour tape and the tape is then sent, for safekeeping, to a locked storage room. The key to this locked storage room is only held by KABC-TV supervisors and access to this room is only available to KABC-TV employees on an "as needed" basis.

4. The dated one-hour tapes are not altered in any fashion while they are held in storage. I have never known

of any alteration of any tape which was stored by KABC-TV in the above-described manner. Indeed, any alteration of the tapes would be directly contrary to the purposes for which the tapes are stored, *i.e.*, to maintain an accurate record of the news stories broadcast by KABC-TV.

5. On July 21, 1982, at 5:00 p.m., KABC-TV broadcast a two-minute and five-second investigative report concerning Inez C. Boyd and Project Total Push (the "Broadcast"). As soon as the Broadcast concluded, the tape of the Broadcast was maintained in the manner described in paragraph 3, above.

6. I have examined KABC-TV's tape of the Broadcast and, to the best of my knowledge, there has been absolutely no alteration of this tape. To the best of my knowledge, this tape represents a complete and accurate representation of the Broadcast. A true and correct videotape copy of the Broadcast is attached hereto as Exhibit "A".

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California, this 4th day of December, 1987.

ROGER G. BELL

ROGER G. BELL

APPENDIX E

DECLARATION OF ALBAN I. NILES

I, ALBAN I. NILES, declare:

I am currently a sitting Municipal Court Judge in the County of Los Angeles, Los Angeles Judicial District. I am personally acquainted with Inez Boyd. Ms. Boyd was employed by Kedren Community Mental Health Center (hereinafter "Kedren") during a period which ended in 1976. I was President and General Counsel of Kedren during this period. During the year 1975-1976, Ms. Boyd was the Executive Director of Project Total Push, which was a drug rehabilitation program funded by L.A. County but administered and managed by Kedren.

On or about September 1, 1975, Kedren entered into a written lease with the late Herman English, Esq., to rent office space at 8508½, 8510 and 8512 South Broadway, Los Angeles, California, to operate Project Total Push. This lease expired on September 30, 1976. At that time, Kedren lost its funding to continue the operation of Project Total Push.

Subsequent to the termination of the lease, Ms. Boyd began efforts to form a non-profit corporation in order to continue the Project that had been begun while connected to Kedren.

I declare under the penalty of perjury and under the laws of the State of California that the foregoing is true and correct to my knowledge.

Executed this 27th day of March, 1986 at Los Angeles, California.

ALBAN I. NILES

ALBAN I. NILES

APPENDIX F

ANTI-DEFAMATION LEAGUE
Of B'nai B'rith
515 MADISON AVENUE, NEW YORK, 22, N.Y., PLaza 1-1800

January 21, 1963

Mrs. Inez C. Boyd
705 Moran Avenue
Toledo, Ohio

Dear Mrs. Boyd:

At your request, the Anti-Defamation League of B'nai B'rith has reviewed the history of its pamphlet *The St. Louis Story: A Study of Desegregation,* published in 1956. We find that it may well be that we did not give adequate description of the fact that the principle source upon which it was based was your Master's Thesis on "St. Louis, Missouri: A Study of the Desegregation Process in an Urban Metropolis."

We also find that it was part of our original understanding with you that we would have your thesis rewritten, revised and supplemented, as it appeared necessary to us.

For the privilege of using your thesis in this manner, ADL was to give you full credit as its author. This was not done. Instead, the name of the person who rewrote the work appeared on the pamphlet as sole author. The note of acknowledgement to you on page 3 does not reflect properly the fact that our publication was inspired primarily by examination of your completed thesis and based essentially on educational research originally conducted by you. We, therefore, are happy to make the record clear that this was the fact.

You may, of course, use this letter as you wish to establish the important role you played in making this pamphlet possible. It is our understanding that you are making no claim for further financial recompense for your role in connection with this pamphlet. As you know, our supply of the piece has been exhausted for some time, and we do not intend to reprint it.

We would, however, be happy to look at any follow-up manuscript you may have for possible publication by ADL and to give you our response and reactions.

Sincerely yours,

HENRY SCHWARZSCHILD

HENRY SCHWARZSCHILD
Director of Publications

HS/ap
cc: Mr. David M. Grant, Attorney

APPENDIX G

South East Regional Coalition on Drugs and Alcohol Abuse

MINUTES November 20, 1973

Present

Gloria E. Keyes, M.D.	MLK	639-8550
Alan Wilkins	L.A. Co. Probation	567-1341
Ernest Parker	Rancho Los Amigos Hosp.	922-7411
Iona Alston	Avalon-Carver	232-8113
Carlene Phillips	Avalon-Carver	233-4268
Fay E. Wilson	Community Health Serv.	466-6417
William A. Long	Central Area Planning Council	758-4189
Raymond Ulmer, Ph.D.	Drew/King	639-8550
Marie Bowden	Mini 12 Step House	233-0498
Roderic W. Jones	L.A. Model Cities	757-3163
Otto Hall	Compton Judicial District	639-6010
Marie DiDonna	AIFC	537-0103
Joan Freeman	AIFC	537-0103
Margaret Sarracino	AIFC	537-0103
Lloyd Robbs	ACSCLA	753-3243
Sechon	SEMHS	631-8675
Paul H. Logan, M.D., M.P.H.	Kedren	587-9161
M. D. Bunton	CSSC	724-7786

The South East Regional Coalition on Drug and Alcohol Abuse was called to order by Gloria Keyes, Vice-Chairman at 9:40 a.m. Minutes of previous meeting were read and approved after corrections.

1. Committee Reports a. Planning and Goals

Mrs. Henry, chairman is out of town, and the committee will meet when she returns.

APPENDIX H

LOS ANGELES
I-TAC, Inc.
#0-0167-00
1/1/81 - 12/31/81

W P NO.	PAGE
PREPARED	DATE
REVIEWED	DATE

On July 26, 1982, Inez Lund, Agency Director, I-TAC, Inc. requested me to contact the State of California Franchise Tax Board regarding I-TAC, Inc's tax status. This was requested because of two letters sent to Mrs. Lund by the aforementioned concern regarding the corporation tax status. Update of letter: May 6, 1982 [illegible] report - May 21, 1982 from Robert Palmer)

At 2:15 PM I called 1-800-852-5711 and spoke to Doris Station 60 of the aforementioned. I was informed that I-The American Citizen, Inc. (Account number 0801450) exempt from state had been received on April 29, 1982. I stated

Those in attendance of this conversation were:

Signed:

Pete Flores
Governmental Liaison

BEST AVAILABLE COPY

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.:

I am a citizen of the United States and a resident of or employed in the City of Los Angeles, County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 1706 Maple Avenue, Los Angeles, California 90015.

On July 28, 1989, I served the within Petition for Writ of Certiorari in re: "Inez C. Boyd vs. Angela Black, Thomas Van Amburg, Kenneth Nelson, and KABC" in the United States Supreme Court October Term 1989 No. . . ., on all parties interested in said action, by placing three true copies thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at Los Angeles, California, addressed as follows:

Michael J. O'Connor
James E. Curry
Christensen, White, Miller, Fink & Jacobs
2121 Avenue of the Stars, 18th Floor
Los Angeles, California 90067

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 28, 1989, at Los Angeles, California.

J. Gordon Hooper

J. GORDON HOOPER

Supreme Court, U.S.
FILED
AUG 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-165

In The Supreme Court

OF THE

United States

OCTOBER TERM, 1989

INEZ C. BOYD,
Petitioner,

vs.

ANGELA BLACK, THOMAS VAN AMBURG, KENNETH NELSON, and KABC TELEVISION, CAPITAL CITIES/ABC, INC.,
Respondents.

On Petition For A Writ Of Certiorari To The California Court of Appeals

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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(Counsel of Record)
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MICHAEL J. O'CONNOR
JAMES E. CURRY
RUTH ANNE TAYLOR

Bowne of Los Angeles, Inc., Law Printers. (213) 742-6600

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RULE 28.1 STATEMENT

Respondent Capital Cities/ABC, Inc., declares that it has no corporate parents or affiliates. Capital Cities/ABC, Inc. has two subsidiaries: (i) ESPN, Inc. and (ii) Practical Home Owners Publishing Company. For purposes of this declaration, "corporate parent" refers to any company that owns a majority interest in another company. "Affiliates" and "subsidiaries" refer to entities in which Capital Cities/ABC, Inc. owns a majority but not a one hundred percent interest.

No. 89-165

In The Supreme Court

OF THE

United States

OCTOBER TERM, 1989

INEZ C. BOYD,
Petitioner,

VS.

ANGELA BLACK, THOMAS VAN AMBURG,
KENNETH NELSON, and KABC TELEVISION,
CAPITAL CITIES/ABC, INC.,
Respondents.

On Petition For A Writ Of Certiorari To The California Court of Appeals

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondents, Angela Black, Thomas Van Amburg, Kenneth Nelson, and Capital Cities/ABC, Inc.,[1] respectfully request that this Court deny the petition for writ of certiorari, seeking review of the opinion of the California Court of Appeal in this case.

---

[1]Capital Cities/ABC, Inc., was erroneously sued herein as ABC and KABC Television.

STATEMENT OF THE CASE

Petitioner has failed to present any grounds to support review of this action. The Petition presents no novel questions of fact or law, and the decision below — that the television broadcast at issue was simply not defamatory of Petitioner, and that there was no showing of malice — was 100% correct on both the facts and the law. Accordingly, this Court should deny the Petition.

Petitioner Inez C. Boyd ("Boyd" or "Petitioner") was an activist in the California anti-drug movement, and was formerly the director of a drug treatment facility in Los Angeles called "Project Total Push: Aftercare" ("PTP").[2] On July 21, 1982, KABC-TV,[3] as part of its 5:00 p.m. "Eyewitness News" program, broadcast an investigative report (the "Broadcast"), concerning confirmed allegations that PTP was under investigation by the State Department of Alcohol and Drug Programs ("ADP"); that ADP was concerned over the results of an audit conducted of PTP; and that ADP was intending to request the Attorney General to investigate the possible misuse of public funds at PTP.[4] The Broadcast was

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[2]PTP was operated under the auspices of I-TAC (I-The American Citizen, Inc.), a non-profit, community based corporation that was founded and directed by Boyd.

[3]KABC-TV broadcasts over Channel 7 in the greater Los Angeles area.

[4]The entire transcript of the report reads as follows:

> "Angela Black: I-TAC is a state funded drug rehabilitation center. One former employee says its director, Inez Boyd, is mishandling the money. The Alcohol and Drug Program in Sacramento funds I-TAC. This year the budget was almost $58,000. That's supposed to pay a staff of four and serve 45 clients. Ron Evans says he worked for I-TAC from September of [footnote cont.]

based, among other things, upon interviews with two former employees of PTP, Ronald Evans and Cecil Miller, as well as an interview with Sarah H. Davis ("Davis"), a director of ADP. Although KABC-TV twice offered Petitioner the opportunity to be interviewed prior to the Broadcast, she refused.

On July 18, 1983, nearly one year after the Broadcast, Petitioner filed a complaint, alleging slander per se against Respondents herein, Capital Cities/ABC, Inc. ("ABC"), Angela Black ("Black"), the Broadcast re-

---

1981 to February of 1982. He says his January paycheck had a stop payment put on it, and he was never paid for February either; a total loss of about $1600. And, he says, clients are not being served as claimed.

"Ron Evans: And I began to feel that it was just terribly wrong, that the public was being ripped off, that the people in the area that could resume, even use the service, were being ripped off also.

"Angela Black: I went to I-TAC offices to get their side of the story this afternoon. The Director was not in. An employee called her on a telephone. She said that she was not available for an interview today. One employee would go on camera. He said a month-long audit of I-TAC was conducted recently, but before that, the records of the clients had disappeared.

"Angela Black: How long have the records been missing?

"Cecil Miller: I don't really know. I know that they were gone when I got there. I've been here a little over a month.

Angela Black: I-TAC lost its state funds on June 30. The employees are reportedly working under contract without pay pending court hearing. Employees say they really will be sorry to see this program go, but they say they honestly don't think it will be refunded. The Alcohol and Drug Program has asked the Attorney General's office to investigate a possible misuse of funds. Angela Black, Channel 7 Eyewitness News, Southcentral Los Angeles."

porter, Thomas Van Amburg, the former station manager and Kenneth Nelson, assistant news director of KABC-TV (collectively, "Respondents").

Upon the conclusion of discovery in this action, including Petitioner's deposition, Respondents moved for summary judgment. On February 5, 1988, the trial court granted summary judgment for Respondents on each of the following grounds: (1) the Broadcast contained no defamatory statements concerning Petitioner; (2) the Broadcast was privileged under the First Amendment, because Petitioner was a "limited purpose public figure" and had failed to adduce any evidence to support a finding that Respondents acted with actual malice; and (3) the Broadcast was a privileged matter of public interest under Section 47(3) of the California Civil Code.

Petitioner filed an appeal of the trial court decision on March 10, 1988. On appeal, the California Court of Appeal specifically affirmed each of the grounds of the trial court judgment, as follows:

> [N]ot one of the alleged defamatory statements was actually made in the Broadcast .... Moreover, Boyd is a "limited purpose public figure." Consequently, any statements made without actual malice are protected by a qualified constitutional privilege under the First Amendment, ... Additionally, the broadcast addressed a matter of public interest and concern. Consequently, the broadcast was the type of communication protected by Section 47, subdivision 3, and the court properly granted the motion for summary judgment.

Court of Appeals Opinion, February 10, 1989 ("Opinion"), at Appendix A, Petition for Writ of Certiorari

("Petition"), pp. A-6 through A-11. Petitioner subsequently filed a Petition for Rehearing to the Court of Appeal on February 25, 1989, which was denied on March 3, 1989. Petitioner thereafter filed a Petition for Review to the Supreme Court of the State of California on March 21, 1989. That petition was denied on May 3, 1989.

In the instant Petition, Petitioner purports to present a single "question" for review. Nevertheless, Petitioner appears to set forth a number of different legal and factual arguments, none of which supports the relief sought:

1. That Respondents violated the fourth amendment by including allegedly "illegally obtained" information in the Broadcast;

2. That Respondents somehow "promoted" Petitioner's "public figure" image in the proceeding below; and

3. That the Court of Appeal erred in denying credence to Petitioner's allegation that Respondents "dubbed" the video tape of the Broadcast, despite the fact that Petitioner presented no evidence whatsoever to support such a theory.

Although Petitioner has argued continually throughout this action that the video tape of the Broadcast was "dubbed," she has raised the "Fourth Amendment" and "artificial public figure" issues for the first time in this Petition.[5]

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[5]The fact that Petitioner has raised these issues for the first time in this Petition is an independent ground for denial of this Petition. *Adickes v. Kress & Co.*, 398 U.S. 144, 147 n.2, (1970) ("Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.").

SUMMARY OF ARGUMENT

A review and writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are compelling reasons for review and important issues of law to be determined. Rule 17, Supreme Court Rules. Moreover, it is axiomatic that this Court limits review to questions of law, not to mere conflicts of fact or evidence. *National Labor Relations Board v. Pittsburgh Steamship Company*, 340 U.S. 498, 503 (1951).

The instant Petition does not address any of the grounds set forth in Rule 17.1 of the Supreme Court Rules. The only conceivable grounds Petitioner might seek to assert for review are that the California Court of Appeal decision is in conflict with other state or federal court of appeal decisions, or that the decision dealt with unsettled questions of federal law or determined a federal question in conflict with a decision of this Court. *Id.*[5] Petitioner has not demonstrated, and cannot possibly demonstrate, any of the above grounds. None of the issues which appear to be presented by Petitioner set forth any question of significant import. More significantly, the California Court of Appeal determined this case as a matter of law in conformity with both federal law and applicable decisions of this Court as well as upon independent principles of state law. Petitioner has simply presented no question which necessitates review by this Court.

---

[5]The other stated ground in Rule 17.1 applies to decisions of federal courts of appeals and is therefore inapplicable to this action.

REASONS WHY CERTIORARI SHOULD BE DENIED

A. There Is No Significant Question of Law Presented by Petitioner's Allegations That Respondents Obtained Information Illegally Because the Fourth Amendment Does Not Apply to Private Individuals.

Petitioner alleges, for the first time in this Petition, that Black's entrance into PTP, a public facility, constituted an illegal search and seizure under the Fourth Amendment. (Petitioner's Writ for Certiorari, pp. i, 7.). However, the prohibitions against unreasonable searches and seizures in both the federal and California constitutions apply solely to the conduct of the government and its agents, not the conduct of private individuals such as news reports. *See, U.S. v. Jacobsen*, 466 U.S. 109, 113 (1984) ("This court has . . . consistently construed [the Fourth Amendment] protection as proscribing only governmental action; it is wholly inapplicable to a search or seizure, even an unreasonable one, effected by a private individual . . . .") *citing Walter v. United States*, 447 U.S. 649 (1980); *People v. Sahagun*, 89 Cal.App.3d 1, 19, 152 Cal.Rptr. 233 (1979). Accordingly, Petitioner's first question fails to set forth any question of law, much less a significant question, which merits review by this Court.

B. The Broadcast Is Privileged Because Petitioner Is a Limited Purpose Public Figure, in Accordance With Settled Principles of Law, and the Broadcast Statements Were Made Without Malice.

Again for the first time in this action, Petitioner has concocted the theory that Respondents somehow "created" Petitioner's status as limited purpose public figure, in order to defame her and to remain within the privilege. However, contrary to Petitioner's assertions, Petitioner's

extensive, voluntary involvement in the widely publicized drug controversy in the Los Angeles area catapulted her into the public arena long before the Broadcast. As confirmed in the Court of Appeal opinion below, Petitioner was, by her own admission, "known from one end of the state to the other"; she took an active role in bringing drug treatment problems to the public's attention; she founded both I-TAC and PTP; she appeared on an NBC broadcast specifically to promote I-TAC; she founded the South East Regional Coalition to serve as the coordinator for the Alcohol and Drug Abuse Program; she had served on advisory groups for the Board of Supervisors and the Narcotics and Dangerous Drugs Commission; and, according to her testimony, "600 people . . . attended 11 weeks of seminars just to hear her expound about ideas on drug programs and funding." Opinion, at Petition pp. A-8 to A-9.

Pursuant to the foregoing facts, the Court of Appeal correctly determined that Petitioner was a limited purpose public figure, for each of the following reasons: (1) Petitioner voluntarily thrust herself into the drug treatment controversy and accompanying publicity, *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 155 (1967) *reh. den.* 389 U.S. 889 (1967); *Gertz v. Robert Welsh, Inc.*, 418 U.S. 323, 351 (1974); (2) Petitioner involved herself in the controversy with the intent to have a major impact on the resolution of that controversy, *Tovoulareas v. Piro*, 817 F.2d 762, 773 (D.C. Cir. 1987) *cert. den. sub nom Tovoulareas v. Washington Post*, 98 L.Ed.2d 151 (1987); *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1297, 1298 (D.C. Cir. 1980) *cert. den.* 449 U.S. 898 (1980); and (3) the Broadcast was within the scope of and reasonably related to Petitioner's participation in the drug treatment controversy. *Harris v. Tomczak*, 94 F.R.D. 687, 704 (E.D Cal. 1982); *Waldbaum*, 627 F.2d at 1298.

The statements set forth in the Broadcast were therefore correctly determined by the Court of Appeal to be subject to a constitutional privilege under the First Amendment. *Gertz*, 418 U.S. at 342. This privilege has been extended to state court defamation actions by the Fourteenth Amendment. *Stromberg v. California*, 283 U.S. 359, 368-69 (1931).

Pursuant to this qualified privilege, Respondents may not be held liable in tort for defamation unless Petitioner can establish, upon prima facie evidence, that Respondents made their statements with actual malice. *Gertz*, 418 U.S. at 342. This Court has defined actual malice as the publication of information "with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times Company v. Sullivan*, 376 U.S. 254, 279-80 (1964). As a limited purpose public figure, Petitioner bears the heavy burden of proving that Respondent's Broadcast statements were made with actual malice. *See, Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 511 (1983) *reh. den.* 467 U.S. 1267 (1984). To meet this burden, Petitioner must prove with clear and convincing evidence that Respondents in fact entertained serious doubts as to the truth of the Broadcast. *Harte-Hanks Communications Inc. v. Connaughton*, 109 S.Ct. 2678, 2689 (1989).

Clearly Petitioner cannot meet this very substantial burden. Petitioner has never presented any evidence whatsoever that Respondents acted with actual malice. In fact, the Court of Appeal concluded that "respondents consulted reliable sources and obtained their information from these sources." Opinion, at Petition p. A-9.

The Court of Appeal's decision was fully supported by the record below and is in conformity with both federal and state law, as well as applicable decisions of this

Court. There is therefore no question of law which merits review by this Court.[7]

C. Petitioner's Allegation That the Video Tape of the Broadcast Was "Dubbed" Does Not Merit Review by This Court.

Petitioner alleged in her complaint below that Black stated, on camera, "[t]he State Department of Alcohol and Drug Programs would have charges of fraud filed within the next day against Boyd, citing mismanagement of public drug abuse monies at the program and [PTP's] delivery of poor health care to the client." Opinion, at Petition p. A-3.

At the hearing on Respondents' motion for summary judgment, the Court reviewed a video tape of the Broadcast, which readily confirmed that the words "fraud" or "charges" were never used. Opinion, at Petition p. A-7. In fact, Petitioner herself admitted in her deposition that she did not view the Broadcast at any time after its initial

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[7]Petitioner's reliance upon *Brown v. Kelly Broadcasting Co.*, 48 Cal.3d 711, 257 Cal.Rptr. 708, 771 P.2d 406 (1989) is wholly misplaced. *Brown* merely clarifies the scope of California's statutory public interest privilege, set forth in section 47(3) of the California Civil Code, only one of several grounds relied upon by the trial court in granting judgment for Respondents. Moreover, the Court of Appeal's determination that the Broadcast was privileged under section 47(3) is fully consistent with the *Brown* decision. Thus, the California Supreme Court determined *Brown* in April 1989, prior to its decision to deny certiorari to Petitioner's Petition for Review. The California Supreme Court obviously had notice of the *Brown* decision and correctly determined that the Court of Appeal's decision in *Boyd v. ABC* comported with *Brown*. Indeed, in footnote 24 of the *Brown* case, the California Supreme Court expressly stated that concern over the use (or misuse) of public funds might be an appropriate circumstance for application of the qualified privilege under section 47(3).

air date of July 21, 1982, until her deposition on September 3, 1987, more than five years after the complaint was filed. Opinion, at Petition p. A-7.

However, rather than admitting that her five-year old memory of the Broadcast may have been mistaken, Petitioner has now embraced the theory that the video tape must have been "dubbed" (*i.e.*, falsified). Petitioner continues to assert this theory in her Petition, regardless of the fact that she has never produced any evidence whatsoever to support her scurrilous allegations. In contrast, Respondents produced direct and uncontroverted evidence from Respondent Black, who actually reported the Broadcast, that the video tape was a true and correct copy of the Broadcast. This was confirmed by Roger Bell, the assistant news director of KABC-TV, who declared that the video tape was a true and correct copy of the Broadcast and there was "absolutely no alteration" of the tape. Opinion, at Petition p. A-4, n.4.

The question Petitioner now raises does not even approach the level of a "conflict of evidence." Rather, Petitioner is merely questioning the authenticity of evidence, an issue which is not proper to address to this Court. *National Labor Relations Board v Pittsburgh Steamship Co.*, 340 U.S. 498, 503 (1951) ("[The Supreme Court] is not the place to review a conflict of evidence, nor to reverse the Court of Appeals because were we in its place we would find the record tilting one way rather than the other . . . . It is not for us to invite review by this Court of decisions turning solely on evaluation of testimony . . .") The trial court, as affirmed by the Court of Appeal, correctly determined, on the evidence before it, that there were no defamatory comments made by Respondents about Petitioner. This question, therefore, does not merit review by this Court.

CONCLUSION

For the foregoing reasons, Respondents respectfully request this Court to deny the Petition for a Writ of Certiorari.

DATED: August 28, 1989

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES } ss.:

I am a citizen of the United States and a resident of or employed in the City of Los Angeles, County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 1706 Maple Avenue, Los Angeles, California 90015.

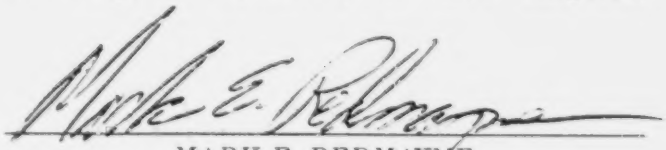
On August 25, 1989, I served the within Brief in Opposition to Petition for Writ of Certiorari in re: "Inez C. Boyd v. Angela Black, Thomas Van Amburg, Kenneth Nelson, and KABC Television, Capital Cities/ABC, Inc.," in the United States Supreme Court, October Term 1989 No. 89-165, on all parties interested in said action, by placing three true copies thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at Los Angeles, California, addressed as follows:

Inez C. Boyd
4649 Paula Way
Fair Oaks, California 95678

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 25, 1989, at Los Angeles, California



MARK E. REDMAYNE